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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Reallocation of Television Channels) ET Docket No. 97-157
60-69, the 746-806 MHz Band)

**COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")¹ hereby submits its comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding.² As set forth below, PCIA urges the Commission to reject a broad allocation for the 746-806 MHz band for virtually any and all commercial and broadcasting services, and instead allocate the remaining spectrum consistent with a sound and comprehensive spectrum management policy that is based on public need and designed to promote efficient usage. To this end, the Commission's proposed allocation for public safety

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² *In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, FCC 97-245 (rel. Jul. 10, 1997) ("Notice").

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services is consistent with Congress' directive in the Balanced Budget Act of 1997 and will help to alleviate critical capacity shortages for these services. In addition, the Commission should consider the needs of private users in making future spectrum allocation decisions.

I. INTRODUCTION

In this proceeding, the Commission continues its ongoing effort to facilitate the recovery of broadcast channels 60-69 for use by public safety and other commercial services. Specifically, the *Notice* proposes to allocate 24 MHz of spectrum at 746-776 MHz and 794-806 MHz for fixed and mobile services for public safety use, and allocate the remaining 36 MHz at 746-764 MHz and 776-794 MHz for fixed and mobile services, while retaining the existing broadcast allocation.³ The Commission seeks comment on its proposed allocations, including whether a "broad allocation" is appropriate for non-public safety services, though it defers consideration of licensing and operational rules to a future proceeding.⁴

While the FCC must reach the specific allocation decisions raised in the *Notice*, Congress has provided clear direction in the Budget Act of 1997 concerning the general allocation and assignment requirements for the reallocation of channels 60-69.⁵ Specifically, the Budget Act of 1997 instructs the Commission to allocate 24 MHz of spectrum between 746-806 MHz "for public safety services" in consultation with the Secretary of Commerce and

³ *Notice*, ¶¶ 9, 13.

⁴ *Id.*, ¶¶ 13, 17-21.

⁵ Balanced Budget Act of 1997, P.L. 105-33, __ Stat. __ (1997) ("Budget Act of 1997").

the Attorney General and commence assignment of such licenses by September 30, 1998.⁶

Congress also required that the remaining 36 MHz of spectrum be assigned for "commercial use" and that the Commission auction licenses for these services after January 1, 2001.⁷

Further, the Budget Act of 1997 sets forth specific objectives for the Commission to be used in formulating service rules for this band, including protecting public safety licensees from harmful interference and ensuring the continued operation of broadcast facilities during the transition to digital television.

II. COMMERCIAL ALLOCATIONS SHOULD BE BASED ON A COMPREHENSIVE SPECTRUM MANAGEMENT POLICY PROMOTING EFFICIENT SPECTRUM USE

PCIA has strong reservations about the Commission's proposal to permit fixed, mobile and broadcasting services in the remaining 36 MHz of the 746-806 MHz band and allow "the maximum diversity in service offerings and the broadest licensee discretion."⁸ In PCIA's view, an important goal of this proceeding should be to ensure that the non-public safety spectrum allocation in the 746-806 MHz band is consistent with a comprehensive spectrum management policy. This policy should be focused on adopting spectrum allocations that meet the needs of the public while maximizing efficient spectrum operations. With this goal in mind, PCIA believes that a broad allocation contemplating virtually unlimited uses will not

⁶ Budget Act of 1997 § 3004 (adding Section 337 to the Communications Act of 1934, as amended).

⁷ *Id.*

⁸ *Notice*, ¶ 13.

further such a policy. Rather, such an approach will lead to inefficient spectrum use, thereby thwarting the Commission's effort to maximize availability of the recovered broadcast spectrum.

First, the Commission should ensure that its allocation decisions regarding the 746-806 MHz band are not based on the illusory objective of maximizing potential auction revenue. Decision-making based on revenue considerations is inconsistent with the Commission's statutory objective to promote efficient spectrum use in furtherance of the public interest and fails to give adequate consideration to the long-term interest in ensuring that spectrum is available to meet future needs.⁹ As recent auctions have demonstrated, there is a sound basis for concern that auction revenue expectations may far exceed market realities when spectrum auctions are used as a revenue raising tool, without adequate consideration of how to ensure that the spectrum is most effectively used by the public.

Second, the Commission's allocations should not seek to maximize spectrum flexibility where this flexibility does not result in an efficient spectrum allocation. A broad spectrum allocation that permits fixed, mobile, and broadcast operations may impede the offering of viable services that meet the needs of the public. In making allocation decisions at this and future stages of this proceeding, the Commission must be mindful that excessively flexible use policies are likely to lead to interference problems and constraints on technical operations that

⁹ Indeed, Section 309(j) expressly prohibits the Commission, in prescribing service area designations and bandwidth assignments, from basing its public interest determination on "the expectation of Federal revenues from the use of system of competitive bidding." *See* 47 U.S.C. § 309(j)(7). Section 309(j)(7) further provides that "[n]othing in this paragraph should be construed to prevent the Commission from continuing to consider consumer demand for spectrum-based services." 47 U.S.C. § 309(j)(7)(C).

limit the nature of services that practically can be made available to the public. Similarly, an excessively broad spectrum allocation may limit the development of new services by creating substantial uncertainty with respect to the continued viability of existing services and the feasibility of new services. Indeed, in adopting the Budget Act of 1997, Congress plainly sought to ensure that the Commission would carefully evaluate the impact of any flexible spectrum allocation on the public interest in order to ensure that the use "would not deter investment in communications services or systems, or technology development."¹⁰ Similarly, Congress sought to ensure that such flexible use allocation "would not result in harmful interference among users."¹¹ While noting that flexibility may be appropriate in certain instances, the conferees specifically found that "unlimited flexibility can introduce a level of entrepreneurial uncertainty that could ultimately retard the development of new services and technology."¹²

PCIA instead urges the Commission to use this proceeding as an important first step toward developing and implementing a coherent spectrum management policy that promotes efficient spectrum utilization of the 746-806 MHz band and other future allocations. This policy must incorporate consideration of the needs of potential users in light of existing service offerings as well as technical capabilities and realities. A well-implemented, comprehensive spectrum management policy advances the public interest because it fosters investor and

¹⁰ Budget Act of 1997 § 3005 (adding subsection (y) to Section 303 of the Communications Act).

¹¹ *Id.*

¹² H.R. Conf. Rep. No. 105-217, at 581 (1997).

consumer certainty, promotes efficient use of valuable, limited spectrum resources, and ensures that spectrum remains available for future applications. Accordingly, PCIA believes that this policy should seek to accommodate Congressional and Commission spectrum allocation objectives, while balancing the ability of existing spectrum allocations to meet actual and projected consumer demand for wireless services, the impact of the proposed allocation on the development of new services and technology, and the projected spectrum requirements for new, advanced wireless services. These considerations, as a matter of sound spectrum policy, counsel against adopting an unnecessarily broad allocation for fixed, mobile, and broadcasting commercial uses in the 746-806 MHz band.

III. THE PROPOSED PUBLIC SAFETY SPECTRUM ALLOCATION IS CONSISTENT WITH THE COMMUNICATIONS ACT AND WILL HELP TO AMELIORATE CRITICAL SPECTRUM SHORTAGES

PCIA strongly supports the proposed 24 MHz allocation for fixed and land mobile public safety applications as a matter of sound policy that is consistent with Congress' mandate for additional public safety spectrum. Congress and the Commission have both recognized the critical need for more public safety spectrum to meet the expanding communications requirements of police, fire, emergency medical, and other public safety agencies and to enhance interoperability between these organizations. As the *Notice* points out, the Public Safety Wireless Advisory Committee ("PSWAC") recently documented the need for additional public safety spectrum, noting that present spectrum allocations do not meet current voice and data needs and limit the deployment of advanced services, such as data and video channels.¹³

¹³ *Notice*, ¶ 4.

Consistent with the recommendations of the PSWAC report,¹⁴ the proposed allocation of additional spectrum at 764-776 MHz and 794-806 MHz will assist in meeting the requirements of public safety agencies. Significantly, the additional frequencies will promote the timely availability of additional public safety services. As pointed out in the *Notice*, the Commission's proposal seeks to minimize the number of existing broadcast services (as well as transitional digital TV ("DTV") operations) in the allocation that otherwise might impede public safety operations. The relatively small number of existing broadcasters in the proposed allocation will allow public safety agencies to provide immediate relief in many major metropolitan areas where the need for additional spectrum is most acute. Consistent with that objective, it is essential that the Commission minimize the addition of DTV allotments in channels 60-69 during the transition period in the pending reconsideration proceedings.¹⁵ Otherwise, effective public safety use of the additional spectrum may be substantially thwarted.

In addition, PCIA believes that the Commission's proposed public safety allocation will greatly enhance interoperability between public safety communications systems, given the proximity of this allocation to other public safety operations in the 800 MHz band. The PSWAC report specifically concluded that spectrum to facilitate such interoperability is necessary due to the increasing number of instances where public safety agencies must work in

¹⁴ See PSWAC, *Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission, Reed E. Hundt, Chairman, and the National Telecommunications and Information Administration, Larry Irving, Assistant Secretary of Commerce for Communications and Information* (1996).

¹⁵ See *Notice*, ¶ 21.

a coordinated effort. Accordingly, the Commission's proposal not only maximizes the immediate availability of spectrum for public safety users consistent with Congress's intent, but also meets critical requirements identified in the PSWAC report and by other members of the public safety community.

IV. TO THE EXTENT POSSIBLE, THE COMMISSION SHOULD MAKE AVAILABLE ADDITIONAL SPECTRUM FOR PRIVATE LAND MOBILE APPLICATIONS

PCIA has filed extensive comments in numerous proceedings, including the Wireless Communications Service proceeding, demonstrating the need for additional private radio spectrum. Land mobile services provide the public with a variety of business and industrial applications that play a significant role in maintaining the infrastructures critical to public safety, such as utilities and transportation facilities. Though private users have continued to adopt more spectrally efficient techniques -- such as digital trunking and reduced channel bandwidths -- to improve utilization, there is a compelling need for additional private land mobile spectrum throughout the United States.

Accordingly, PCIA requests that the Commission consider ways to address private spectrum needs. PCIA encourages the Commission to begin exploring concepts and ideas, in addition to the allocation of more spectrum, that would support utilizing spectrum to expand land mobile operations private users.

V. CONCLUSION

PCIA believes that the recovery of broadcast channels 60-69 presents an important opportunity to develop a spectrum policy that promotes efficient spectrum allocations and

ensures that spectrum is dedicated to services with a demonstrated need for additional capacity. To this end, PCIA urges the Commission to allocate spectrum in the 746-806 MHz band for commercial services in a manner that is consistent with a coherent spectrum management policy focused on meeting the needs of the public and that maximizes the efficient use of this valuable, limited spectrum resource. Along these lines, the Commission has correctly recognized the need for additional public safety spectrum, and PCIA supports the Commission proposed allocation for these services. Further, PCIA urges the Commission to consider the needs of private applications in developing a spectrum policy and in making future spectrum decisions.

Respectfully submitted,

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